



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

SIERRA MEDICAL CENTER, C/O LAW OFFICES
OF P. MATTHEW O'NEIL
6514 MCNEIL DR. BLDG 2 SUITE 201
AUSTIN, TX 78729

DWC Claim #:

Injured Employee:

Date of Injury:

Employer Name:

Insurance Carrier #:

Respondent Name

TEXAS MUTUAL INSURANCE CO

Carrier's Austin Representative Box

54

MFDR Tracking Number

M4-09-8055-02

MFDR Date Received

MAY 08, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "... The procedure involved surgery, anesthesia, supplies, and pharmaceuticals. Fair and reasonable payment for this claim should be at 75% of the Hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold ... In this case, the Carrier has drastically underpaid the Hospital by ignoring its obligation to reimburse the Hospital 75% of its usual and customary charges with no basis in law or fact. Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75% ... Thus, the Carrier in this case was required to pay 75% of the Hospital's usual and customary charges for these extensive and costly services. That amount in this case would have been \$47,083.35. To date the Carrier has paid the Hospital a total amount of \$9,269.49. Thus, \$37,813.86 remains due and owed."

Amount in Dispute: \$37,813.86

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated May 29, 2009: "... Texas Mutual reviewed the medical records and other information furnished by the hospital to Texas Mutual with the billings and/or the hospital's request for medical dispute resolution. The issues in this case are whether or not this bill meets the criteria necessary to receive reimbursement at a stop loss rate, this carrier's right to audit the charges, and fair and reasonable reimbursement for implants. It is this carrier's position the requestor has not supported reimbursement in the amount billed, that the amount billed is due for the implants, or that the services rendered during the admission were unusually costly or unusually extensive ... In conclusion, the admission did not have services that were unusually costly and total audited charges do not exceed the minimum threshold of \$40,000. Payment under the stop-loss exception has not been justified by the hospital in this case, and Texas Mutual's payment under the per diem plus carve-outs method is appropriate."

Response Submitted by: Texas Mutual Insurance Company

Respondent's Supplemental Position Summary Dated September 7, 2011: " ... The requestor's DWC-60 packet contains no information substantiating its position (a) that the stop-loss exception has only to exceed \$40,000.00 in audited charges and (b) that the admission was unusually extensive or costly."

Response Submitted by: Texas Mutual

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 08, 2007 through August 12, 2007	Inpatient Hospital Services	\$37,813.86	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- CAC-W4 – No additional reimbursement allowed after review of appeal/reconsideration
- CAC-47 – This (these) diagnosis(es) (are) not covered, missing, or are invalid
- 246 – The treatment/service has been determined to be unrelated to the extent of injury. Final adjudication has not taken place
- 891 – The insurance company is reducing or denying payment after reconsideration

Issues

1. Is Denial Code 246 Supported?
2. Did the audited charges exceed \$40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as

described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. The insurance carrier denied disputed services with reason codes 246 "The treatment/service has been determined to be unrelated to the extent of injury." Review of Division records indicates that the carrier has accepted a total knee replacement, therefore extent of injury is not an issue per the carrier. This denial code is not supported. The disputed services will therefore be reviewed per applicable Division rules and fee guidelines.
2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$62,777.80. The division concludes that the total audited charges exceed \$40,000.
3. The requestor in its original position statement asserts that "The procedure involved surgery, anesthesia, supplies, and pharmaceuticals. Fair and reasonable payment for this claim should be at 75% of the Hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold ... In this case, the Carrier has drastically underpaid the Hospital by ignoring its obligation to reimburse the Hospital 75% of its usual and customary charges with no basis in law or fact. Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75% ..." In its position statement, the requestor presupposes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
4. In regards to whether the services were unusually costly, the requestor states "Thus, the Carrier in this case was required to pay 75% of the Hospital's usual and customary charges for these extensive and costly services. "The third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss the particulars of the admission in dispute constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
5. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was four days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of four days results in an allowable amount of \$4,472.00.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed three units of Latanoprst 2.5ML at \$487.75/unit, for a total charge of \$487.75 and one unit of Advair 50/250 at \$865.50/unit, for a total charge of \$865.50. The requestor did not submit documentation to support what the cost to the hospital was for Latanoprst and Advair 50/250. For that reason, reimbursement for these items cannot be recommended.

- The division notes that 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bills finds that the following items were billed under revenue code 0278 and are therefore eligible for separate payment under §134.401(c)(4)(A) as follows:

Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
4012201	Zimmer	Size 3 Tibia Lot # 60673216	1 at \$3,100.00 ea	\$3,100.00	\$3,410.00
8131520	Zimmer palaces c	Palacos R	2 at \$80.00 ea	\$160.00	\$176.00
TOTAL ALLOWABLE				\$3,586.00	

The division concludes that the total allowable for this admission is \$4,472.00 + 3,586.00. The respondent issued payment in the amount of \$9,269.49. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive, and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	10/25/12 _____ Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	10/25/12 _____ Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service* demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.